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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,776

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EXAMINER

GUTMAN, HILARY L

ART UNIT

PAPER NUMBER

3612

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DELIVERY MODE

12/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/524,776	<b>Applicant(s)</b> YAMAGUSHI, KENJI	
	<b>Examiner</b> Hilary Gutman	<b>Art Unit</b> 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 27, 35 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 28-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/16/05 &amp; 4/15/08</u> .                                   | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species A in the reply filed on 9/15/08 is acknowledged.
2. Claims 27 and 35-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/15/08.

### ***Information Disclosure Statement***

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.
4. The information disclosure statement filed 2/16/05 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Specification***

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed

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150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

6. The disclosure is objected to because of the following informalities: any and all instances where claims and their corresponding claim language are described should be modified to simple describe the claim language without referencing the specific claim itself since the language and numbering of the claims may change throughout prosecution of the application.

Appropriate correction is required.

### ***Claim Objections***

7. Claims 2-3 and 18 are objected to because of the following informalities:

In claims 2-3, on line 4 of each claim "by" should be "at".

In claim 18, line 7, "which" should be inserted before "is".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 4-5, 15, 19-20, 29, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 4 recites the limitations "the impact force" in line 3 and "the time period" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitations "the impact energy absorption time period" in lines 4-5 and line 7. There is insufficient antecedent basis for this limitation in the claim.

With regard to claim 15, line 2, "claim 4" should apparently be "claim 14" since claim 15 should depend from claim 14 for proper antecedent basis with the claim language.

Claim 19 recites the limitation "a plurality of buckling energy absorbing portions" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "a buckling energy absorbing portion" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 29 recites the limitation "a buckling energy absorbing portion" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim. Also it is awkward for a "buckling energy absorbing portion" can comprise a "buckling energy absorbing portion". It is redundant.

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-2, 4-6, 8, 11-17, and 34, as best understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Weissenborn et al. (6,672,635).

With regard to claim 12, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same

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as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

12. Claims 1-6, 8-9, 11-20, 26, 28-29, and 32-34, as best understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Loren (5,100,187) as seen in Figure 4.

With regard to claim 12, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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15. Claims 7, 10, and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loren.

With regard to claims 7, 10, and 30-31, Loren fails to disclose the specific foaming expansion ratios of the foamed molded pieces of the compression energy absorbing member and of the buckling energy absorbing member. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided various ratios for the compression and buckling energy absorbing members, since doing so requires only routine skill in the art. Such modifications can be made in order to optimize the deformation of the absorbing members and thereby provide the most impact absorbing protection to occupants within the vehicle.

16. Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loren.

With regard to claims 21-25, Loren fails to disclose varying the height, thickness, width, density, and cross sectional area of the buckling member. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided various dimensions such as height, thickness, and width and further to have modified and varied the cross sectional area and density of the buckling member of Loren, since doing so requires only routine skill in the art and since doing so would optimize the deformation of the absorbing members and thereby provide the most impact absorbing protection to occupants within the vehicle.

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***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 571-272-6662.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hilary Gutman/  
Primary Examiner, Art Unit 3612